

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 02-273
WITH RCW 42.17)	
)	Report of Investigation
Black Diamond Citizens for)	
Political Responsibility)	
)	
Respondents)	
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I.

BACKGROUND

- 1.1 On November 28, 2001, Robert Edelman filed a citizen's action in accordance with RCW 42.17.400 with the Office of the Attorney General and the King County Prosecutor's Office. Mr. Edelman's complaint alleged violations of RCW 42.17.530 by the Black Diamond Citizens for Political Responsibility and Rick Luther, Christopher Hurst and Kevin Esping for sponsoring political advertising that contained false statements against Barry Kombol, a candidate for the mayor of Black Diamond. Mr. Edelman provided the PDC with a courtesy copy of his complaint.
- 1.2 On December 6, 2001, the Black Diamond Citizens for Political Responsibility and Rick Luther, Christopher Hurst and Kevin Esping were sent letters notifying them about the complaint.
- 1.3 On December 12, 2001, the PDC was officially notified by the Office of the Attorney General that they were referring the matter to the PDC for investigation.

II.

SCOPE

- 2.1 Reviewed complaint letter and other information filed by Mr. Edelman and received by the Attorney General's Office on November 28, 2001.
- 2.2 Reviewed response received on December 14, 2001 from Rick Luther, Christopher Hurst and Kevin Esping.
- 2.3 Reviewed response received on December 14, 2001, from the Black Diamond Citizens for Political Responsibility. The information provided by the respondents included the following documents:
 - US West Dex, South King County White & Yellow Pages phone book, and a photo copy of page 219 that alphabetically covered the names Koffa-Kocsak;
 - Documents that included an Environmental Protection Agency printout from a Superfund website for Palmer Coking & Coal, a Potential Hazardous Waste Site Preliminary Assessment Summary Memorandum, a Potential Hazardous Waste Site Preliminary Assessment, and four newspaper articles from the TNT, the Seattle PI, and the Valley Daily News;
 - Several Notices of Violations were provided, and other documentation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal;
 - A September 8, 1997 letter from the Department of Ecology (DOE) to the US Department of the Interior regarding enforcement action taken against Pacific Coast Coal Company between 1991-1996;
 - A number of articles from a variety of newspapers around the Puget Sound region contained information regarding Pacific Coast Coal, Palmer Coking & Coal, the Landsburg mining operation, the John Henry mine, and pollution-related issues;
- 2.4 On December 28, 2001, the Black Diamond Citizens for Political Responsibility provided the following additional information:

- A political advertisement sponsored by Barry Kombol's campaign for mayor of Black Diamond;
 - A written statement from George McPherson received on December 28, 2001;
 - A written statement from Geoff Bowie received on December 28, 2001.
- 2.5 On January 10, 2002, PDC staff conducted a telephone interview with Barry Kombol regarding PDC Case No. 02-272 and 02-273.
- 2.6 On January 10, 2002, PDC staff sent Barry Kombol a letter confirming the information discussed during the telephone interview, and requesting a response certifying what was discussed.
- 2.7 On January 11, 2002, PDC staff reviewed three volumes of files at the Kent Regional Justice Center, for Case No. 98-3-00480-4 KNT regarding the marriage of Cathleen Teresa Kombol and Barry Christopher Kombol.

III.

RELEVANT AREAS OF LAW

- 3.1 **RCW 42.17.020** states in part the following:
- “(32) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.”**
- 3.2 **RCW 42.17.530** states in part the following:
- “(1) It is a violation of this chapter for a person to sponsor with actual malice:**
- (a) Political advertising that contains a false statement of material fact about a candidate for public office. However, this subsection (1) (a) does not apply to statements made by a candidate or the candidate's agent about the candidate or himself or herself;**

(2) Any violation of this section shall be proven by clear and convincing evidence.”

3.3 **RCW 42.17.505** states the following:

“The definitions set forth in this section apply throughout RCW 42.17.510 through 42.17.540.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.”

IV.

FINDINGS

4.1 On November 28, 2001, Robert Edelman filed a citizen's action in accordance with RCW 42.17.400 with the Office of the Attorney General and the King County Prosecutor's Office. Mr. Edelman's complaint alleged violations of RCW 42.17.530 by the Black Diamond Citizens for Political Responsibility for sponsoring three political advertisements that contained false statements against Barry Kombol, a candidate for the mayor of Black Diamond. On November 28, 2001, Mr. Edelman provided the PDC with a courtesy copy of the complaint. **See Exhibit #1.**

4.2 On December 6, 2001, PDC staff sent a letter to the Black Diamond Citizens for Political Responsibility (BDCRG) requesting a response to Mr. Edelman's complaint regarding alleged false statements made against Barry Kombol in political advertisements sponsored by BDCRG. PDC staff requested specific documentation or information regarding the following statements:

- Barry Kombol resided in Enumclaw, not Black Diamond;
- Barry Kombol resided in his mom's basement in Black Diamond;
- Pacific Coast Coal Company and the Palmer Coking Coal Company had been cited for significant pollution and contamination problems;
- Barry Kombol opposes the Growth Management Act.

4.3 On December 14, 2001, the Black Diamond Citizens for Political Responsibility responded to the complaint filed by Mr. Edelman. **See Exhibit #2.**

False Statements in First Advertisement

- 4.4 The complaint filed by Mr. Edelman included the allegation **“The first advertisement made the following false statements: “Barry Kombol wants to be mayor of Black Diamond but he lives in Enumclaw” and “Barry Kombol claims he lives with his mother in the basement of this house in Black Diamond but this house doesn’t have a basement.”**
- 4.5 The Black Diamond Citizens for Political Responsibility stated the following in their response with regards to the allegations of Barry Kombol’s residency (**See Exhibit #1, page 5 for advertisement**):

“Barry Kombol was a resident of Enumclaw for the year preceding his unsuccessful campaign to become the Mayor of Black Diamond. The telephone book is published by US West for the year 2001. Attached to this response is the actual phone book and you can see for yourself the entry. This is long after his divorce in 1998. It is also long after the beginning of the 12-month residency requirement necessary for his campaign in a Code City. You will note the entry from the phone book is published exactly as it appears without alteration of any kind.”

“As his ex-wife with whom they share custody of two minor children, she has steadfastly maintained that Mr. Kombol is a resident of Enumclaw and has been for the year prior to his campaign. In light of her contact with him on a continual basis due to the shared custody, her statements are evidence of his residency.”

“...The relevant fact is that members of the committee verified this information prior to the mailing going out.”

- 4.6 The Black Diamond Citizens for Political Responsibility provided the South King County edition of US West Dex, the White and Yellow Pages, along with a photocopy of the front cover of the phone book and page 219. **See Exhibit #3.** The front cover of the phone book indicated to **“Use Through July 2001”**, and on page 219 listed two addresses and three phone numbers for Barry Kombol. It also listed a telephone number under Barry & Kathy. The telephone listings for Barry Kombol were published by US West as follows:

- Kombol, Barry 24023 SE 440th, Enumclaw, Washington, 98022 (360) 825-1973;
- Kombol, Barry atty 31615 3rd, Black Diamond, Washington, 98010 (360) 886-2868; and
- Or (425) 432-3380.

4.7 Mr. Edelman indicated in his complaint that “Qwest Dex issued the current South King County telephone book in July, 2001, well in advance of the advertisement mailing in October. The current page does not show Mr. Kombol at the Enumclaw address.” The South King County edition of Qwest Dex, the White and Yellow Pages that states **“Use Through August 2002”** listed the following on page 217 for Barry Kombol (**See Exhibit #4**):

- Kombol, Barry atty 31615 3rd, Black Diamond, Washington, 98010 (360) 886-2868; and
- Or (425) 432-3380.

The Qwest Dex white pages through August 2002 did not list a residential address for Barry Kombol.

The mailing address listed on the Personal Financial Affairs Statement (PDC Form F-1) filed by Barry Kombol was 31615 3rd Avenue, Black Diamond, Washington, 98010. That is the address of Mr. Kombol's law practice. Under the real estate section of his F-1, Mr. Kombol listed his home at 30411 234th SE, but no city or zip code was provided.

False Statements in Second Advertisement

4.8 The complaint filed by Mr. Edelman included the allegation **“The second advertisement made the following false statements (See Exhibit #1, page 6 for advertisement):**

- **“He profits from large mining operations regulated by the city of Black Diamond.”**
- **“Barry Kombol has a key ownership and management position in Pacific Coast Coal Co., Franklin Energy LLC and Palmer Coking Coal Co.”;**
- **“His companies have been cited for significant pollution and containment problems”;**
- **“If Barry Kombol becomes Mayor, he’ll look the other way and the contamination will only get worse.”**

4.9 Allegation #1: **“Barry Kombol profits from large mining operations regulated by the city of Black Diamond.”**

The Black Diamond Citizens for Political Responsibility stated in its response, **“This area of Palmer Coking Coal is not only in Black Diamond, but drains into Lake Sawyer, which is also in the City of Black Diamond and is the 4th largest lake in King County.”** The city of Black Diamond would have some regulatory oversight over business entities operating within its city limits.

4.10 Allegation #2: **“Barry Kombol has a key ownership and management position in Pacific Coast Coal Co., Franklin Energy LLC and Palmer Coking Coal Co.”.**

The Black Diamond Citizens for Political Responsibility referred to the Personal Financial Affairs Statement (PDC Form F-1) filed by Barry Kombol, and statements made by Mr. Kombol during his divorce proceedings. The F-1 filed by Barry Kombol on September 7, 2001, disclosed that he held an interest in the partnership of Palmer Coking Coal Company, and listed the value of that interest at \$75,000 or more, and income from that interest of \$15,000 to \$29,999. Mr. Kombol also disclosed that he owned stock in Pacific Coast Coal Company valued at \$75,000 or more and the income from that stock ownership of \$1 to \$2,999. In addition, Barry Kombol also filed an F-1 Supplement for Pacific Coast Coal Co. in which he listed himself as a Director and the Secretary/Treasurer of that entity. **(See Exhibit #1, pages 8-12 for copy of F-1)**

4.11 A telephone interview with Barry Kombol was conducted on January 10, 2002 with PDC staff. In that interview, Mr. Kombol stated the following about ownership interests and management positions for the following entities:

Pacific Coast Coal Company:

Mr. Kombol has a 7% ownership interest, is a board member and the Secretary/Treasurer;

Franklin Energy, LLC:

Mr. Kombol has a 7% ownership interest and is the manager;

Palmer Coking Coal Company:

Mr. Kombol has under a 5% partnership interest in the company, but no management or board position.

4.12 Allegation #3: **“His companies have been cited for significant pollution and containment problems.”**

The Black Diamond Citizens for Political Responsibility provided a number of documents and articles supporting the statement in one of the political advertisements, **“His companies have been cited for significant pollution and containment problems.” See Exhibit #5.** Those documents included the following with regard to Pacific Coast Coal:

- January 30, 2001, Notice of Violation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal;
- August 19, 1999, Notice of Violation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal;
- November 17, 1997, Notice of Violation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal.

4.13 The Black Diamond Citizens for Political Responsibility provided a September 8, 1997, letter from the Department of Ecology (DOE) to the US Department of the Interior regarding enforcement action taken against Pacific Coast Coal Company between 1991-1996. **See Exhibit #6.** The letter went on to indicate that Pacific Coast Coal Company had received four notices of violations, two notices of penalties, and one administrative order from the DOE between 1991 and 1996.

4.14 In addition, the response from the Black Diamond Citizens for Political Responsibility included the following with regards to Palmer Coking Coal:

“...Your letter suggests that we said that Palmer Coking Coal had been cited for environmental violations. If you check the EPA web site at <http://www.epa.gov/superfund/sites/arcsites/reg10/a1000582.htm> you will find that Palmer Coking Coal was listed as a SUPERFUND SITE for the dumping of 40,000 gallons of oil into a pond along with unidentified chemical barrels and paint sludges....”

- 4.15 A review of the Environmental Protection Agency (EPA) website address provided by the Black Diamond Citizens for Political Responsibility indicated that Palmer Coking & Coal was an archived EPA site. The one page summary for Palmer Coking & Coal reported that the discovery was completed on August 1, 1979, a preliminary assessment had been conducted between May 21, 1985 and June 6, 1985, and that a site inspection had been conducted between October 31, 1986 and November 20, 1986.

In addition to the EPA website printout, the respondents also included the following documents involving Palmer Coking Coal (**See Exhibit #7**):

- A Potential Hazardous Waste Site Preliminary Assessment Summary Memorandum from the EPA;
- A Potential Hazardous Waste Site Preliminary Assessment from the EPA; and
- Newspaper articles from the TNT, the Seattle PI, and the Valley Daily News.

- 4.16 The *Potential Hazardous Waste Site Preliminary Assessment Summary Memorandum* for Palmer Coking Coal Company from the EPA listed a revised date of January 2, 1986. It included under the Waste Types, Quantities and Character section the following statement, **“Pond near coal washing area was used to dispose of a reported 40,000 gallons of oily wastewater from 1969-71.”**

“WDOE inspector also observed chemical barrels and paint sludges in the 1970’s...”. In addition, under the “Priority Assessment/Backlog Reduction Category” section, the following statement was included: **“Medium: Oily wastewaters, possibly paint sludges, other chemicals buried at site. High risk of population exposure if contaminants migrate & reach drinking water supplies.”**

- 4.17 The *Potential Hazardous Waste Site Preliminary Assessment Part 1-Site Information and Assessment* for Palmer Coking Coal Company from the EPA listed a date of May 1, 1985. Included under the section “Description of Substance Possibly Present, Known, or Alleged” the statement, **“Palmer Coking & Coal operates coal washing facility & has offices at the site. About 40,000 gallons of oily wastewaters were disposed in ponds... WDOE inspector saw paint sludges & other chemicals also believed to be disposed in pond area, which has been covered with coal-coking slag.”**

In addition, under the section “Description of Potential Hazard to Environment and/or Population” was the following statement: **“Risk of population exposure if contaminants migrate from pond-disposal area & reach groundwater and drinking water. Unknown if area of dead trees observed near pond site resulted from pond leachate, coal washing activities or other causes.”**

- 4.18 On May 10, 1991, an article appeared in the Seattle P-I from George Foster entitled “Toxins found in drums at Ravensdale mine site” that discussed that the state Ecology Department had found toxic chemicals on property owned by Palmer Coking Coal Company. The article went on to state:

“Palmer was fined by the Ecology Department in the late ‘70s for illegally dumping industrial waste at Landsburg. The company owns the open-pit John Henry Mine at Black Diamond...”

- 4.19 The Black Diamond Citizens for Political Responsibility provided no evidence or information indicating that Franklin Energy, LLC had been cited for any pollution or containment problems.

- 4.20 Allegation #4: **“if Barry Kombol was elected Mayor of Black Diamond, he would look the other way and the contamination would only get worse.”**

This statement was included in the political advertisement sponsored by the Black Diamond Citizens for Political Responsibility, and is a matter of opinion and not a false statement.

False Statements in Third Advertisement

- 4.21 The complaint filed by Mr. Edelman included the allegation, **“The third advertisement ostensibly shows a comparison of Howard Botts and Barry Kombol. The following false statements are made in that comparison”** (See Exhibit #1, page 7 for advertisement):

- **“Under the entry “Current Residence, the false statement that Mr. Kombol lives in Enumclaw is repeated.”**

- **“Under the entry “Protecting Our Quality of Life”, the false statement is made that Mr. Kombol opposes the Growth Management Act. Mr. Kombol has not opposed the act. Mr. Sorci and Mr. Cline have produced no evidence to the contrary.”**

4.22 A political advertisement sponsored by Barry Kombol’s campaign for mayor of Black Diamond was provided as evidence by the Black Diamond Citizens for Political Responsibility that Mr. Kombol opposed the Growth Management Act. **See Exhibit #8.** The advertisement included the following statement under the section Black Diamond has:

“spent \$501,086 on outside consultants and Pierce County law firms implementing “updates” to the comprehensive plan over the last 4 years. That “comprehensive” plan that fails to address Black Diamonds existing problems.”¹

4.23 In addition, statements were received on December 28, 2001 from two individuals, Geoff Bowie, an incumbent Black Diamond City Council member, and George McPherson, who were in attendance at candidate forums when Mr. Kombol addressed the issue of growth management. **See Exhibit #9.** Those statements included the following about a Candidates Forum at Lake Sawyer attended by Mr. Kombol:

George McPherson stated that:

“...I wish to state that it was plainly clear that Barry Kombol strongly criticized the City of Black Diamond for implementing the Growth Management Act and the basic principles (sic) outlined in the act itself.”

“His criticisms were centered on his belief that the requirements of the Growth Management Act and the adoption of this act by the City of Black Diamond through their comprehensive plan and updates of that plan, were overly burdensome to the business community.”

¹ The comprehensive plan adopted by local municipalities, including Black Diamond is part of the Growth Management Act.

Geoff Bowie stated that:

“...He went on to say that the biggest detriment to new business was the City’s over-burdensome environmental regulations and comprehensive plan. Further, he pointed out that if elected Mayor he would create “neutral” regulations within the City and it was very clear this was a deregulation move on his part...”

“Also Mr. Kombol spoke of the current zoning regulations and their negative effect on the City’s business growth patterns. The zoning regulations are a key component of the city’s compliance with the Growth Management Act...”

4.24 The allegation regarding the residency of Barry Kombol was addressed in section 4.4 through 4.7 of this report of investigation.

4.25 In all matters relating to this investigation, the Black Diamond Citizens for Political Responsibility has fully cooperated.

Respectfully Submitted this ____ day of January, 2002.

Kurt Young
Chief Political Finance Specialist

List of Exhibits

- Exhibit #1** On November 28, 2001, a courtesy copy of the complaint filed Mr. Edelman was provided to the PDC.
- Exhibit #2** On December 14, 2001, the response was received from the Black Diamond Citizens for Political Responsibility regarding the Bob Edelman complaint.
- Exhibit #3** A photocopy of the front cover of the South King County edition of US West Dex through July 2001, the White and Yellow Pages, along with a copy of page 219.
- Exhibit #4** A photocopy of the front cover of the South King County edition of US West Dex through August 2002, the White and Yellow Pages, along with a copy of page 217.
- Exhibit #5** A January 30, 2001, Notice of Violation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal; a August 19, 1999, Notice of Violation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal; and a November 17, 1997, Notice of Violation from the US Department of the Interior, Office of Surface Mining Reclamation and Enforcement against Pacific Coast Coal.
- Exhibit #6** A September 8, 1997, letter from the Department of Ecology (DOE) to the US Department of the Interior regarding enforcement action taken against Pacific Coast Coal Company between 1991-1996.
- Exhibit #7** A printout from the EPA website; a Potential Hazardous Waste Site Preliminary Assessment Summary Memorandum from the EPA; a Potential Hazardous Waste Site Preliminary Assessment from the EPA; and newspaper articles from the TNT, the Seattle PI, and the Valley Daily News.
- Exhibit #8** A political advertisement sponsored by Barry Kombol's campaign for mayor of Black Diamond.
- Exhibit #9** Statements received on December 28, 2001 from Geoff Bowie and George McPherson